



POLICE DEPARTMENT

March 5, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Janice Quintero  
Tax Registry No. 927383  
18 Precinct  
Disciplinary Case No. 2010-1842  
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The above-named member of the Department appeared before me on December 4, 2012, and January 11, 2013, charged with the following:

1. Said Police Officer Janice Quintero, on September 26, 2009, while on-duty and assigned to the 18<sup>th</sup> Precinct, having been informed by an individual known to this Department that he was the victim of an assault, did fail and neglect to properly perform a Complaint Report, as required. (*As amended*)

P.G. 207-07, Page 1, Paragraph 3 – COMPLAINTS

The Department was represented by Vivian Joo, Esq., Department Advocate's Office, and Respondent was represented by Stuart London, Esq.

Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Detective Alejandro Acevedo, Police Administrative Aide Dorinda Valentine, Lieutenant Keith King, and Sergeant Kenneth Monahan. The Department also submitted in evidence the interview transcripts of Person A (Department's Exhibit [DX] 1) and Person B (DX 2).

Detective Alejandro Acevedo

Acevedo has been a member of the Department for 21 years. For the past 10 years, he has worked as an investigator for the Hate Crime Task Force and has spoken to over a thousand complainants. He has declined to classify a case as a hate crime based on the credibility of witnesses or complainants. He checks the credibility of a complainant by trying to find independent witnesses, sometimes with surveillance videos. He also reviews whether the complainant has a history of making these allegations in the past.

On September 26, 2009, Acevedo was assigned to investigate an allegation of a hate crime occurring in the Midtown North Precinct. The case was classified as an Assault in the Third Degree. The assault was charged as a hate crime because of the comments that were made toward the complainant. The comments involved some reference regarding the complainants' sexuality. Acevedo called this particular case "an anti-gay case."

On September 28, 2009, Acevedo interviewed the complainants, Person A and Person B (interview transcripts DX 1 and DX 2). They told him that on September

26, 2009, Person B was walking with two other friends and someone flicked a cigarette at one of them. The cigarette hit Person B on his leg. Person B immediately turned around and looked at the man and asked him, "Did you just flick that cigarette at me?" The man said, "Keep walking, faggot." Acevedo stated, "And at this point, an altercation ensued where the perpetrator attacked my victims."

During his investigation and with assistance from a special agent from the military, Acevedo identified the perpetrator as a member of the Air Force, Person C. Based on video evidence and interviews with and injuries sustained by the complainants, Acevedo charged Person C with Assault in the Third Degree as a hate crime. Part of Acevedo's determination in charging Person C was based on believing the description by Person B and Person A of what occurred.

Acevedo thought that, instead of the Manhattan District Attorney's office, a military tribunal found Person C guilty, demoted him and was handling the penalty phase.

On cross-examination, Acevedo agreed that part of the allegations of Person B and Person A concerned what happened in the precinct. He conceded that he was not in the precinct and did not see what happened there. Acevedo explained that Person B and Person A volunteered information about what happened in the precinct. Acevedo knew nothing about Respondent being on the telephone switchboard (TS) desk and had no idea who she was.

Acevedo testified that his job was to investigate the criminal case, not the administrative case. Acevedo was aware that Police Administrative Aide (PAA) Valentine wrote the Complaint Report for Assault in the Third Degree. He did not interview Valentine. He confirmed that Valentine, the person who drafted the actual

Complaint Report was not part of his investigation. Acevedo did not speak with Sergeant Monahan either. He did not know who Monahan was. He reiterated that he did not investigate and did not know what happened in the precinct afterward.

Acevedo testified that because of the way the complainants were treated by the police in the past, he felt it was his responsibility to make them feel comfortable. Person A and Person B complained that they were not treated fairly at the precinct. Acevedo could not remember specifically to whom they referred. He was aware that a Complaint Report for Assault in the Third Degree was filled out for them at the precinct. He agreed that filing this complaint was what they originally wanted done on the street. He also agreed that part of their anger was that the officers on the street did not fill out a Complaint Report for assault.

Acevedo was not involved with the administrative side of this case regarding the officers either on the street or in the precinct. Other than Person B and Person A, he did not interview any police officers that were involved in the altercation in the street or from the precinct. He confirmed that his sole responsibility in this case was to determine whether charges should be proffered against Person C.

Police Administrative Aide Dorinda Valentine

Valentine has been a PAA since 1994 when she started working for the Department. For the past seven to eight years she has worked at the Midtown North Precinct.

There she is assigned to the 124 Room where she deals with complainants who walk in from the street. Her duties include processing Complaints Reports. During her career as a PAA, she has prepared thousands of Complaint Reports.

Before she prepares a Complaint Report, she speaks to the complainant to find out what happened and asks detailed questions. She writes up the report, writes down the offense and hands it to the Desk Officer. After the Desk Officer approves and signs the Complaint Report, Valentine processes it.

On September 26, 2009, Sergeant Monahan directed Valentine to prepare the Complaint Report (DX 3). That day the TS Operator was Respondent. The injuries Valentine observed on Person A were a swollen jaw and a laceration, a slight cut on his inner lip. She did not observe either Person A or Person B to be intoxicated. If she had observed either of them to be intoxicated, she would have noted that in the Complaint Report.

She explained that the case status on the Complaint Report says "closed" because the description of the perpetrator was too vague. When a case is closed the case is not referred to the Precinct Detective Squad (PDS). However, if more information is obtained, the case could be re-opened. She explained that the PDS would not want to see this report at this stage because there was not enough of a description of the perpetrator from the complainant.

On cross-examination, Valentine explained that when you enter the Midtown North Precinct, on the left you see the TS desk and beside it is a big desk where the Desk Officer sits. She acknowledged that the TS Operator would be the first person you would see. She agreed that if you were standing in front of the desk where the Desk Officer sits, then the TS would be to the left. Valentine clarified that "it's gated off so you cannot go

beyond where the desk is. You cannot go, so when you come in, that TS person is your front line of defense right then and there.” She further agreed that the TS is who you see first, not the Desk Officer and that you go to the TS first.

She remembered that Respondent was the TS Operator that day. She knew that Respondent was on restricted duty. She explained that it varies as to whether those who are on restricted duty are assigned to the TS. Normally she works with Respondent in the Complaint Room. But for that particular tour, Respondent was assigned to the TS.

Valentine said that the Complaint Room is located to the right of the TS. She agreed that if you walk in the Precinct, the desk is to the left and the 124 Room is to the right. She explained that the Complaint Room has a swinging door so that anyone cannot walk into it. Because she worked midnights, and for her own safety, Valentine preferred that people stayed outside the room. She would sit at her desk and speak to them through the plexiglass window.

She had worked with Respondent before and never had any problems. She added that they “work very well together.” Valentine described Respondent’s demeanor when she speaks to complainants as “fine” and “lovely.” She never observed Respondent being rude to them. Valentine testified, “She’s a very, very nice person. I will give her that. I take my hat off to her. She’s very helpful. If she can help you, she will help.”

Valentine said that when Respondent is at the TS Desk and she is in the Complaint Room, it is Valentine’s responsibility to draft the Complaint Report.

Valentine remembered that the Complaint Room’s door was closed that night. Sergeant Monahan poked his head in and said, “Ms. Valentine, would you mind taking this report for me?” She told him, “Sure. No problem whatsoever.” She did not think

that he told her what the charge should be. Because of the swollen jaw and the cut inside the mouth, she ascertained that the charge should be Assault in the Third Degree.

She could not see the cut just by looking at the person's face. To see the cut she had to ask the complainant to show it to her. He pulled down his lower lip. She did not leave the 124 Room, but "had to get up" to see the cut.

Before Monahan asked her to take the report, she did not discuss this case with Respondent. After Monahan asked her to take the report, Respondent did not come into the 124 Room to assist her. Valentine confirmed that Respondent was never involved with drafting that Complaint Report and that Valentine did it herself.

That night she never saw Respondent speaking to the two complainants. Neither of them complained to her about Respondent. Nor did she hear either of them complain about Respondent.

After she drafted the Complaint Report, she wrote it up and gave it to the Desk Officer. That officer read it, signed it and then Valentine processed it. She thought that the only time that she left the 124 Room that night was to give the Complaint Report to the Desk Officer. When she did come out of the 124 Room, she could not remember whether she saw Respondent. She did not recall seeing Respondent engaged in any conversation with the two complainants. She was never questioned by the Department and affirmed that this was the first time she ever testified as to what happened that night, over three years ago.

When she was speaking to the complainants that night, Valentine estimated that she was approximately ten feet away from them. In order to see the injury to the complainant's lip, Valentine had to walk to the window and open the plexiglass. Then

the complainant pulled down his lower lip to show her. Valentine agreed that both complainants were ten feet away from her for most of the time she was questioning them.

She confirmed that it was her job to properly prepare that Complaint Report and not Respondent's job. She thought that Sergeant Martinez approved the report and believed that he was on the desk that night. Other than taking the report that Monahan asked her to do, she had no further involvement in this case or with Monahan about the report.

Prior to her testimony she had never discussed this case with Respondent. The Internal Affairs Bureau (IAB) never contacted her about this case. No one did.

When questioned by the Court, Valentine said that during her interview with the complainants that night, they were standing ten feet away from her. Because she could not see the swollen jaw of the complainant, she "had to go up to the window to actually see the injuries." From the window, she estimated that she was about two to three feet away from the complainant.

On re-cross-examination, she explained that she could see the swollen jaw herself, "but the only thing that had to be pointed out was the cut on the inner part of the lip." She said there was no black-and-blue and no laceration around the swollen jaw. The complainant brought to her attention that there "could be a little redness." She did not recall whether he indicated he had substantial pain.

Lieutenant Keith King

King has been a member of the Department for 20 years and 10 months and been assigned to the 111 Precinct for over a year. When he worked at IAB Group 10, he



supervised the case that alleged that on September 26, 2009, Respondent failed to take a report. The complainants were Person A and Person B.

During his investigation, King learned that on September 26, 2009, Respondent was assigned to Midtown North Precinct as the TS Operator. King explained that the TS Operator generally answers the TS at the precinct. The operator is “usually the first person that has contact with complainants as they come into the station house.” The TS Operator takes reports, directs complainants to either the 124 Room or refers them to the proper authorities. King testified that TS Operators are authorized to take Complaint Reports.

On July 23, 2010, King conducted an official Department interview of the Respondent. During that interview King stated that Respondent described the two complainants as loud and combative. Respondent wanted to take a report for harassment but the complainants demanded a report for assault.

Respondent told King that she was trying to explain the difference between assault and harassment and that she would take a report for harassment. Respondent described her interaction with the complaints as “long” and “somewhat in-depth.” The complainants told King that “there was no interaction” and that they were unable to explain how they were assaulted.

King asked Respondent whether she told the complainants to get out of the precinct. At first Respondent told him that she could not remember. King believed that they pressed her and then she said that it was not her duty that day to take a report. When questioned further, she said she could not recall.

King asserted that in her capacity as a TS Operator, Respondent had a duty to take a report from Person B and Person A. He explained that the complainants' description of the incident rose to the level of an offense that mandates a report.

On cross-examination, King agreed that the officers who were involved with the complainants on the street were interviewed within three months of the date of the incident. He agreed that investigators interview people shortly after the incident because events are fresher in people's minds.

King questioned Respondent on July 23, 2010, and conceded that this interview occurred almost a year after the incident. He could not recall why she was interviewed so much later. He said that he "came in late into the investigation."

King did not interview Monahan. He agreed that Monahan identified Respondent as the TS Operator that night. He did read Monahan's official Department interview of Respondent.

King admitted that no one who he interviewed who was in the precinct when the two complainants came could corroborate that Respondent was rude to the complainants. King did not interview the Desk Officer who was in the precinct that day, the PAA who took the report or anyone who was in the precinct when the complainants were there. He conceded that the only evidence he had about Respondent's behavior and conduct toward the complainants came from the complainants themselves.

King stated that ultimately he was in charge of this investigation. When asked whether he was the one who determined who to interview to decide whether Respondent committed misconduct, King replied, "This wasn't my case from the initial point. I came

in late in the case. A lot of interviews had already been done, so I just kind of cleaned it up and you know, moved forward.”

King said that Respondent had not been interviewed before he came into the case and that he authorized that interview based on Monahan’s identifying her. King did learn that Valentine wrote up the Complaint Report for Assault in the Third Degree. He stated that he did not interview Valentine. Sergeant Ortiz interviewed her. That interview was tape-recorded. When asked whether he had possession of that interview with him now, King replied, that he was sorry and that Valentine was never questioned in an official Department interview.

When asked if he wanted to withdraw his previous statement that Valentine was interviewed, King said yes. He then admitted that she was never interviewed by him or anyone on his team. He explained that “she was just a person of record that took the actual Complaint Report. I don’t think there were any allegations against her.”

When asked why it would not be important to determine the conduct of Respondent by speaking to the person from the 124 Room who drafted the Complaint Report, King replied that the PAA’s function would be just to take the report. He conceded that it was important to speak to those people who are involved in the allegation. When asked whether Valentine was someone involved in taking the Complaint Report, King replied that the complainants never made any allegation against the PAA.

King did not recall whether the complainants indicated that Respondent interacted with Valentine. King said that he read the transcript of the complainants’ interviews.

King conceded that in these interviews the complainants indicated that when the PAA was taking the report, Respondent interfered with their ability to tell their story.

King conceded that it would have been an appropriate investigative step to determine from Valentine whether Respondent interfered with her taking that report.

He admitted that he did not do it.

He agreed that one of the PAA's functions is to draft Complaint Reports in the 124 Room. He also agreed that Monahan did not commit any misconduct by asking Valentine to do the Complaint Report. He agreed that Monahan went to Valentine to have the Complaint Report drafted because Valentine was assigned to the 124 Room.

King agreed that Respondent was on the desk as the assigned TS Operator that night. He agreed that if there was no one in the 124 Room, the TS Operator is authorized to write up a Complaint Report. He agreed that Valentine writing up the Complaint Report as directed by Monahan was within proper Department procedure.

King conceded that if Respondent directed the complainants to the 124 Room for the Complaint Report that was not misconduct. He reiterated that Valentine taking the report in the 124 Room was not misconduct and that Monahan authorizing Valentine to take the report was not misconduct. He conceded that the mere fact that a complaint may have been made to Respondent when the report was filled out by Valentine in the 124 Room was not misconduct.

King acknowledged that, according to the complainants, Respondent told them that their complaint was about harassment and not assault. King explained that the complainants asserted that they were not allowed to describe the incident. They said that Respondent told them to leave.

King recalled that Monahan stated that when he heard the conversation with the complainants and Respondent, he got involved, spoke to the complainants and directed them to the 124 Room for the Complaint Report to be taken.

King agreed that it was Respondent's right to tell the complainants that the injury may not rise to the level of assault and that she thought it was harassment. He confirmed that an officer must ascertain the correct charge. He agreed that sometimes complainants are not happy with an officer's conclusion about what the correct charge is.

King recalled reading in the transcripts something about Person B and Person A calling Respondent and not getting her name because she kept hanging up on them. King acknowledged that the "proper format" for a TS Operator to answer the phone is to give her name such as: "Hello, such and such Precinct, Officer Quintero." King conceded that he did not investigate whether Respondent answered the phone using this format. He also conceded that he never learned that she does not answer the phone that way. He agreed that the complainants indicated that they called maybe the next day or even longer afterward to get her name. He conceded that he did not even check whether Respondent was working any of the days following the incident.

King agreed that if someone comes into the precinct and wants to file a report for Crime A, and the officer thinks it is better for Crime B, and then they are referred by a sergeant to another officer in the 124 Room who drafts the Complaint Report, that TS Operator has not committed any misconduct.

On redirect examination, King explained that Respondent's misconduct was substantiated not because Respondent failed to make the right report, but because she refused to take the report.

On re-cross-examination, King agreed that even the complainants, by their own words, indicated that Respondent told them that the crime was harassment, not assault. Respondent's attorney asked King whether Respondent's statement to the complainants indicated that she would have been willing to take the report for harassment, not for assault. King replied that a report should have been taken whether it was for harassment or assault. He agreed that a report was taken but asserted that it was taken by the PAA. He agreed that the report was taken the same day that the two complainants walked into the precinct and spoke to Respondent. He also agreed that two reports, one by Respondent and one by Valentine, should not be done and that one report was done in this case for exactly what the complainants wanted.

In response to questioning by the Court, King replied that he, along with Ortiz, conducted Respondent's official Department Interview on July 23, 2010. When asked why did he not need to speak to Valentine to make a decision, he replied that the allegation was that Respondent refused to take a report and, "At the time, I guess -- I didn't catch it and the investigator -- the supervisor before me didn't either, and I didn't think it was very crucial to the allegation."

On re-cross-examination, King believed that Person B did refer to Respondent as the "Cane Lady." King stated that he ultimately was in charge of this investigation. He signed off on all the progress reports late into the investigation because there was another supervisor assigned before him.

King was read an excerpt from the interview transcript of Person B Page 30, Line 14:

But then we saw "Cane Lady" walk in to the clerk and

started like whispering in her ear, yeah, they attacked a guy and this guy said they were all up on his shit, like trying to downplay our story to the clerk, which didn't seem necessary. We're telling our account. Let her write our account and you can write your own account later.

King explained that he did not interview Person B but that an investigator assigned to the case before King did.

King agreed that when Person B said they walked "in to the clerk," they were talking about Valentine. He agreed that basically Person B was saying that Respondent was obstructing Valentine from taking this report.

Interview of Person A on September 28, 2008 (DX 1)

The Department issued a subpoena to Person A on November 14, 2012, at his last known address and then made a phone call to him. A week before this trial began, Person A returned the Advocate's phone call. He told her that he never received the subpoena because he had moved to Los Angeles. He explained he could not afford to come to New York and would not be available to testify.

What follows is a summary of relevant excerpts from the Departmental interview of Person A:

Person A was frustrated by the lack of response by the police to their complaint. Person A just thanked them and walked away. He and Person B went to a bar called Posh for about an hour. They were, he said, "just kind of in shock." After meeting with friends, Person A and Person B took a cab to Person B's apartment. Person B's roommate urged them to go to the precinct and file a report. They felt, Person A said, "You know what, we're tired, we're overwhelmed, but this needs to be done .... "

At the precinct, the first person Person A spoke with was Monahan. Person A explained the incident and that he wanted to file a report. Monahan told him that he would “look it up” and to have a seat while he went to the computer.

When Person A and Person B sat down “there was a woman who I don’t know her name, she immediately gave us attitude like what do you want, why are you here?” She was a white, short police officer in uniform with shoulder-length brown hair and walked with a cane (Respondent).

Person A said he did not “know why she came off so – with so much attitude before we had even said anything to her. She said that there was nothing they could do, there was no report to be filed, before she knew any facts about anything. And she said why are you here, and we, you know, kind of tried to explain it to her, and she just was basically yelling at us from moment one.” He said that they could not “get a word in edgewise with her.”

At some point Monahan came back over and told them a report would be filed for them. Person A did not remember everything he said, but described Monahan as “very helpful.” Monahan apologized for their treatment and said “that it hadn’t been protocol.” Monahan referred them to a clerk who Person A described as a large black woman.

Person A said that the clerk asked for the “play by play” description, a description of the man and any specific thing that they could remember him saying.

Respondent “came back out” when Officer Howard appeared in the precinct. Person A and Person B recognized Howard as one of the police officers who had not taken a report from them on the street. Howard said, “Why are you guys here? We told you we couldn’t do anything.”



Words were exchanged between the clerk and Respondent. When asked what the words were, Person A replied, "I don't know exactly what she was saying. She was whispering to her about our case, and all I could hear her say was it's just a couple of guys shoving, blah, blah, blah, blah, blah." Person A believed Officer Howard and Respondent had a conversation in the back area before she came back out. Person A did not know whether the sergeant working that night spoke to Respondent.

Person A indicated that after they finished speaking to the clerk and she took the report, Respondent kept coming back and telling them that they had no right to be there. Person B said something about this being his neighborhood where he pays taxes, "This is the theater district and I'm a Broadway actor." She said, "I don't care who you are. If you were the president of the United States I couldn't do anything."

Person A explained that Respondent interjected herself three times: "the first time when we first got there, and then a second time, and then the third time when she told us that we were giving her attitude, and that's probably why they didn't do anything." Person A described Respondent's demeanor as "very confrontational. She just—she was so ready to fight with words that before she even knew what was going on because we hadn't told her anything."

Person A said that when the police first interviewed him his lip was "busted" and "bleeding." He said it was "not a serious injury" but his jaw "has a new click on both sides, and it's really tight. It was—the left side of my face was swollen for about a day. The swelling has gone down now because it's been almost three days." He said that when the officers first arrived his lip was badly and visibly lacerated and bleeding.

Person A said that Respondent had a thick Queens accent.

Person A conceded that he and Person B drank that night. They were at the bar for about an hour and had one drink. He said that they were not intoxicated and could probably have passed a Breathalyzer.

Interview with Person B on September 28, 2009 (DX 2)

The Department issued a subpoena to Person B on November 14, 2012, at his last known address. After making a telephone call to him, the Advocate received a message from Person B saying, "I received the subpoena. I have a couple of questions. Please call me back."

The Advocate called Person B back twice over the past three weeks and left him two messages. She also left him her office number and her personal cell phone number so that he could reach her over the weekend, telling him he could call her up to midnight. Person A, with whom she spoke by phone, indicated that he was in touch with Person B and would try to reach him. She never did hear from Person B and he did not show up for the trial.

What follows is a summary of relevant excerpts from the Departmental interview of Person B:

When he and Person A finally came to the precinct, Person B stated, "they would not allow us to file a report." He said, "The lady behind the desk (Respondent), I believe she's some sort of disabled cop at this point, she had a cane, and she clearly had been filled in on the situation and tried to kick us out the second we walked in the door."

Person B indicated that Respondent was telling them that what the police officers had originally told them was correct, that "there's nothing they can do for you." At that

point Monahan appeared. When they explained the situation, Monahan said that they could file a report and directed them to the clerk's window. Person B then added, "The entire time the Cane Cop, - - the room saying we told you this wasn't an assault, there's nothing we can do for you, this isn't assault, this is just harassment. I said, well, either way you have to write a report up, you have to write a file on this."

After Monahan told them they could file a report, Person B said:

But then we saw Cane Lady walk into the clerk and started like whispering in her ear, yeah, they attacked a guy and this guy said they were all up on his shit, like trying to downplay our story to the clerk, which didn't seem necessary. We're telling our account. Let her write our account, and you can write your own account later. She was so adamant on kicking us out, she wanted to have nothing to do with us and did not want us to file a report for some reason. I don't know why."

He said that they called for the last two days and no one would give them her name. He said that Respondent hung up on them. When asked how he knew it was her, he replied, "Because I was told to call back at midnight when she would be back at the desk if I wanted to know her name. So I started calling at midnight, and I recognized her accent, and um, she kept hanging up on me." Person B said she hung up on his roommate, his brother and "multiple people" and eventually just stopped answering the phone. This occurred 24 hours later, on a Sunday morning.

#### Sergeant Kenneth Monahan

Monahan has worked for five years in Midtown North Precinct as a sergeant.

Monahan was working during the early morning hours of September 26, 2009, as a cabaret supervisor. He overheard Respondent, who was in the enclosed 124 Room,

talking with complaining witnesses, who were in the lobby of the precinct. He intervened because he overheard the complainants saying that they were victims of an assault and the officers in the field told them that they were victims of harassment. The complainants were not screaming at Respondent.

Monahan said, "Sir, if you believe you're the victim of assault, it has to rise to a certain level. What's your complaint?" The complainant told him that his face hurt and that he had a cut inside his mouth. When Monahan asked to see the cut, the complainant had to pull down his lip to show it to him. Monahan saw a cut inside the complainant's mouth and described it as a "little laceration inside."

Monahan described the complainants' demeanor toward him as "fine." Monahan classified the complaint as an Assault in the Third Degree because the man complained of pain and had an injury. After Monahan directed Valentine to take the report, he had no more contact with the complainants.

He explained that the TS operator answers the phone in the precinct and is the first person who greets people who come in to make complaints. They can take reports or whatever is directed by the desk officer. Monahan testified that the TS operators are authorized to take Complaint Reports and that they can take a Complaint Report even if a PAA in the 124 Room is available. When a member of service becomes aware of a crime, that member has to take a Complaint Report. This is true even when the complainants are uncooperative.

On cross-examination, he testified that he never saw Respondent be rude or discourteous to the complainants. He never heard her say, "If you don't like it, you can leave the precinct."

He agreed that the primary responsibility of the TS Operator was to answer the phone. When the TS operator answers the phone, she gives her name. In this particular case, the first person the complainants would have seen would have been Respondent.

Monahan conceded that he did not see the complainants when they first walked into the precinct and approached Respondent.

Monahan agreed that the incident was fairly fresh in his mind when he was interviewed on September 30, 2009. He agreed to all of the following: What normally happens is if there is a PAA in the 124 Room and there is someone on the TS and someone wants to make a complaint, the person drafting that Complaint Report is the PAA in the 124 Room. If there is no one in the 124 Room, then the TS operator can assume those duties and write up the Complaint Report. In this particular case, if there is someone in the 124 Room, like Valentine, it would be Valentine's primary duty to draft the Complaint Report.

Monahan agreed that whether this particular case was assault or harassment was a close call. This is because he did not see any swelling, any blood on any of the clothes, any broken bones, or any fractures. He did see a laceration inside the mouth, but the complainant had to open his mouth so he could look inside. Monahan did not know where the laceration came from. He agreed that it was small.

He agreed that both complainants were gratified when he took over and allowed a complaint for Assault in the Third Degree to be drafted. He agreed that they did not give him a hard time at all. He agreed that he gave them what they articulated, which was the assault charge.

He did not remember ever smelling alcohol on their breath during this time.

He agreed that he did not really get into the facts of the case at all and never knew it was an alleged hate crime. He had no idea that their homosexuality was an issue.

When he first observed the complainants, they were outside the 124 Room and Valentine and Respondent were in the 124 Room. He believed that he overheard a conversation between Respondent and the complainants, but could not hear what they were saying. He was not aware at that point that Respondent thought the complaint might just be a harassment and the complainants thought it should be for assault. His understanding was that the complainants were complaining that the officers in the field deemed it a harassment and the complainants thought it should be an assault.

Monahan agreed that the complainants were annoyed or frustrated at the officers in the field. Monahan did not believe that they ever complained to him about Respondent's conduct. Monahan did not take the complaint, call IAB, or fill out any reports. He reiterated that he did not hear Respondent's conversation with the two complainants. He just knew that they were upset that the officers in the field would not draft the assault Complaint Report for them.

Before speaking to the complainants, he did not speak to Respondent. He did not speak to Valentine. Monahan agreed that Respondent was not involved with his conversation with the two complainants. She was not involved in drafting the Complaint Report either.

He agreed that after he saw the small cut inside the mouth, he authorized the Assault in the Third Degree classification and told Valentine to draft the Complaint Report. He had no further contact with Respondent.

As far as Monahan knew, the field officers involved in this case never came into the precinct while he was there.

He recalled from reading in the paper that either later that night or the next day, people were calling the TS Operator and they were being hung up on. He agreed that when TS Operators answer the phone, they always answer with their name first.

When asked by the Court if he was aware of any incidents of people calling in the following days, Monahan did not recall specifically. Upon further cross-examination, he indicated that he may have remembered this incident from what he read in the paper. He said he remembered "people calling the precinct and hanging up, but that stuff happens a lot." He added, "But newsworthy stuff I can't remember exactly."

He stated that he never observed Respondent answer the phone, not give her name and hang up on anyone. He did not observe any misconduct by Respondent on the night in question when the two complainants were there. He did not notify IAB about Respondent. He did not want to give her a Command Discipline for anything. As far as he was concerned, she was just doing her job that night. When questioned by the Court, Monahan indicated that he did not know whether it was Respondent's regular practice to give her name when she answers the phone.

Monahan agreed that after he saw the complainant's cut, he asked if they wanted medical attention and they refused. Monahan testified that he explained to the complainants that he did not know exactly what was said to the officers in the field, "but if you left out that you were still feeling pain, that would be a harassment because you have no visible injuries. But since you're telling me you're in pain, it's going to be an assault."

Monahan agreed that their subjective comment about feeling pain was partly what tipped the scales in his mind to make it an Assault in the Third Degree, adding, "that combined with the small laceration in his mouth."

On redirect examination, Monahan said that when he saw the two male complainants speaking with Respondent while she was in the 124 Room, the complainants appeared agitated. Monahan said he does not normally supervise Respondent and has never directly supervised her. He explained that technically she was assigned to his unit, but because she was injured, she was assigned a [clerical] position inside the precinct and Monahan was assigned a patrol position. Since she was in the precinct and he was out on patrol, he never directly supervised her. He did not have opportunity to watch her at the TS, explaining that he was never the desk officer while she was assigned to the precinct.

#### Respondent's Case

Respondent testified on her own behalf.

#### Respondent

Respondent has been a police officer for the Department for almost 13 years. She has been primarily assigned to the Midtown North Precinct. Throughout most of her career, she has been assigned to patrol or to a specialized unit. One of those specialized units was the conditions unit.



In April 2008, she was in a Department vehicle accident and sustained injuries to her neck and back. These injuries resulted in her being placed on restricted duty, doing clerical work in the Midtown North Precinct.

On September 26, 2009, Respondent was the TS Operator. Her duties were to answer the main switchboard lines, assist the Desk Officer and greet the people who come in. Valentine was the assigned PAA in the 124 Room.

She explained that, in her precinct, the TS Operator is on the right side of the desk and the desk sergeant has the major portion of the desk, in the middle. The first person you encounter when you come into the precinct is the TS Operator. Respondent would be to the right when someone walks through the front doors. The 124 Room is towards the very far right.

Respondent described the two men who came into the precinct at about 3:00 a.m. as "pretty agitated." She asked them, "How can I help you" and they started to tell her that they were assaulted. She was behind the desk at the TS and they were on the other side. Respondent described the complainants as "loud and boisterous" indicating to her "that they may have been drunk." As they came closer, Respondent "could smell the alcohol on their breath" and "could see that they had glassy eyes."

She asked them what happened. They told her that both of them and one other man had been assaulted out in the street. She asked where the other person was; they told her that he went home. They said that the assault happened out in the street and that they were assaulted by one person.

Respondent explained that the way that they were telling the story was incoherent and she was having a hard time understanding it. She could not understand how one

individual could beat up three other people at the same time. She did not see any visible injuries on them, any blood, swelling, cuts or contusions.

From what she could gather, the men were also extremely upset because the police responded to the scene and did nothing. When she asked them the names of the police involved, they could not tell her. She asked them if they were hurt or injured; they said they were. But when she asked what their injuries were, they could not tell her. When asked if one of them opened their mouth to show her a cut, Respondent said no.

Respondent stood up to look at the clothes for blood and to see if there was any injury on them. She could not see anything. Their clothes were arranged neatly, so it did not seem that they were in a fight. She kept asking them, "Where were you injured?" Finally, one of them pointed towards his lips but she could not see anything. She informed him that it was not going to be classified as an assault, but as harassment.

When she started to explain the difference between assault and harassment, the complainants became more agitated and hostile and extremely upset. At this point, she was behind the TS. They began demanding to know why nothing was done at the scene. She told them, "I can't comment on what happened outside because I wasn't there. I don't know what happened."

The conversation "kept going back and forth, they kept insisting it was assault, I was telling them that it was harassment." Finally, Monahan intervened and he pulled them to the side to speak to them. Respondent then went into the 124 Room to inform Valentine that there were people there to make a report.

Respondent told Valentine that she believed that it was going to be harassment and not assault. Respondent explained to Valentine that one person said that he had an

injured lip but she did not see any injuries. Respondent expected that Valentine would make further inquiry. She had no further conversation with Monahan. After relaying the information to Valentine, Respondent left the room and went back to the TS where she had to keep answering the phones.

While the complainants were speaking with Valentine, they continued to express anger toward Respondent indicating, "It's assault . . . , it's not harassment." They were upset that nothing happened at the scene. Respondent kept telling them, "I don't know what happened at the scene. I don't know who the officers are."

Respondent believed that after Monahan stopped speaking with the complainants, he went to the window and spoke with Valentine. Respondent did not hear the conversation he had with the complainants or Valentine.

After the Assault in the Third Degree Complaint Report was drafted, Respondent had no further contact with the complainants, Monahan or Valentine. Respondent testified that the complainants "kept verbally attacking" her, and she told them to please speak with Valentine about taking their report.

Respondent explained her responsibilities on the TS when there is a member such as Valentine in the 124 Room: "Since I'm the first person that greets everybody that comes in, I get a short synopsis of the story of whatever it is so that I can inform PAA Valentine or whoever is in the room of the details of, you know, whatever I have so that way they could further question and get the whole story of what's going on since they have to draft a report."

If there is someone in the 124 Room, Respondent does not draft the report. Her main responsibility is to answer the phone at the TS. If she is busy taking a report, then

nobody is answering the phone "and we need to answer the switchboard." If there is nobody else in the 124 Room, the Desk Officer directs her to take the report. If another officer is assigned to station house security or anything else, the Desk Officer will direct that officer to take the report. That night, no one directed her to take complainants' report. This was normal because there was a PAA assigned to the 124 Room.

After the complainants left the precinct, she never received any phone calls from them. She did not answer the phone and just hang up without identifying herself. Respondent testified that she always has to identify herself. She has never answered the phone without giving her name and just hanging up. After the Complaint Report was drafted, she had no further contact, either by phone or in person, with any of the complainants.

When asked if she was aware that Monahan was interviewed by the Department just four days after the incident, Respondent replied that she was not aware of anybody being questioned in an official Department interview and did not know anything about what had happened. She was interviewed by the Department almost a year later from the incident. No one spoke to her within a week of this incident occurring. She thought that she saw a short little synopsis about this incident on television.

Respondent stated that she was not rude to the complainants and that she kept addressing them as "Sir." She did not fail to take a report from them. She reiterated that it was not her job to take the report. She stated that she did not prevent the complainants from telling their story.

Respondent saw Monahan intervene and push the complainants to the side so that he could speak with them. She figured that since he was the cabaret sergeant working out

on the street, he may have known what was going on and had had interaction with them out in the street.

The incident occurred Friday night into Saturday morning and Respondent had to come back into work that same day. She worked that particular Saturday night. Then she was off for the next several days. Respondent explained that in the cabaret unit, they have Sunday and Monday nights off. The next time she would have been back at work would have been Tuesday night.

On cross-examination, Respondent confirmed that when she had the initial contact with the two complainants, they informed her that they were assaulted along with another person who was not with them. They told her that the assault was from someone in the street and that there was a verbal argument before the physical assault. Respondent understood that the throwing of the cigarette escalated the verbal argument into a physical argument. She agreed that she stated on direct examination that she could not comprehend how one individual could beat up three people.

Respondent did not recall whether she asked what the perpetrator looked like. She did not recall whether she asked how much he weighed or how tall he was.

When asked whether Respondent was thinking that what the complainants had described could not happen, she responded, "No, that's not true. I was just trying to get more of the information. Because I wasn't at the scene I don't know what happened."

Respondent admitted that she never looked into the complainant's mouth. She never had him pull his lip out to show her any laceration because, she explained, "he didn't offer that to me. He just pointed to his lip and I didn't see anything."

The Advocate asked Respondent whether when the complainant pointed to his lip Respondent investigated further and asked, "Where on the lip are you talking about? "Show me. Is it inside? Outside? You're pointing to me, I don't know what you're doing; did you tell that to him?" The Respondent stated, "I don't recall."

Respondent could also not recall whether she asked the complainant if he needed medical attention. She explained that from what she could gather from the story, and from what she could see, there were no physical injuries on them.

Respondent agreed that her own position is that the PAA has the responsibility to judge what type of report is to be taken. She explained that the PAA is the one who drafts the Complaint Reports, gathers more information and classifies the crime. If there are any questions about the classification, the PAA would go to the desk sergeant. This is because that sergeant has to sign the Complaint Report.

Respondent disagreed that if it was not her responsibility to take that report there was no reason for her to speak with the complainants and tell them whether their complaint was an assault or harassment. She asserted that she still had to inform them about what the report may be. Many times after she speaks to individuals they change their stories. If they want, they speak to the PAA, who gathers more information. Respondent believed that the PAA gets more of the story, or the complainants change the story altogether when they speak to her. If the PAA was the person who would take the complaint, why, Respondent was asked, did she give her opinion about what the complaint should be? Respondent maintained that she had to give her opinion because the complainants kept demanding to know why the police in the street failed to take their

complaint. She was explaining to them that, from what they were telling her, the complaint was for harassment.

Respondent did not ask the desk sergeant for help because “everything was just happening so fast.” Respondent conceded that she claimed that the complainants were demanding, loud and boisterous but did not even recall whether she called the desk sergeant. Respondent could not remember whether she ever told the complainants that if they were not happy with the report that was going to be taken, they could leave the precinct. She remembered that they were intoxicated, but did not remember if she told them to leave the precinct.

On re-direct examination, Respondent testified that although she was not responsible for drafting the final report, she had a duty to tell the PAA as much as possible to assist the PAA. Respondent explained that the PAA always asked her why the complainants were there. She had to ask complainants general questions so the PAA would be prepared with further questions to ask. That is what Respondent did in this case.

Although the complainants were rude to her, Respondent maintained that she “just kept addressing them as, Sir.”

As far as she knew, there was no complaint made against her that evening.

When questioned by the Court, Respondent answered that she usually spends a few minutes just to get a brief description from complainants to find out the reason that they came to the precinct. After getting a general idea what the report will be, she informs the PAA. She did not remember any other situations where complainants have not been happy with what she has told them.

FINDINGS AND ANALYSIS

The sole specification against Respondent reads: Respondent, “while on-duty and assigned to the 18<sup>th</sup> Precinct, having been informed by an individual known to this Department that he was the victim of an assault, did fail and neglect to properly perform a Complaint Report, as required.”

This charge involves the conduct of Respondent at the precinct. However, the charge against Respondent stems from events in the street earlier that night which include the conduct of the initial responding officers.

Person A and Person B alleged that, on September 26, 2009, at around 12:30 a.m. they were walking with a third man along Ninth Avenue in Manhattan. A man smoking in front of a bar flicked a cigarette which hit Person B’s leg. Person B turned to the man, who they later learned was named Person C, and asked him whether he really intended to flick the cigarette at him. Person C replied, “Keep moving, faggot” and made other derogatory anti-gay remarks. When the men argued with him about his comments, Person C began pushing and punching them. When Person B called the police on his cell phone, Person C said the police would not help him and pushed Person B hard into a car. Another man, who appeared to be Person C’s friend, also said that the police would not do anything because Person C was a Marine.

After they arrived and spoke with everyone, the responding officers decided not to make a report. Person A and Person B left, frustrated and appalled. Still in shock from the incident, they went to a bar and had a drink. Afterward, they went to Person B’s home where they decided that they were going to demand that the police take a report.



When they entered the Midtown North Precinct, they first encountered Respondent and then spoke with Sergeant Monahan. Based on his conversation with the complainants, Monahan determined that a Complaint Report for Assault in the Third Degree should be filed. He referred Person A and Person B to Valentine, who spoke with them and wrote up a Complaint Report.

There are two different versions of the dialogue between the complainants and Respondent.

The Department contended that Respondent started yelling at the complainants saying that there was nothing the police could do for them and that the complaint was not an assault, but harassment. The Department's position is that Person B and Person A just wanted a report filed and did not care whether this report was characterized as a harassment or an assault. They claimed that Respondent refused to take a Complaint Report and wanted to get rid of them.

Respondent denied refusing to take a Complaint Report or trying to prevent complainants from filing one. She testified that in her conversation with them, she was trying to explain the difference between assault and harassment. She also testified that Person B and Person A became incensed when she said that the complaint would be for harassment. Respondent's attorney argued that it was not Respondent's job to take Complaint Reports, but Valentine's. And Valentine did draft the Complaint Report for Person B and Person A. Thus Person B and Person A were never prevented from filing their complaint that night.

Besides the complainants and Respondent, there were no witnesses to the interaction which forms the substance of this charge. Both complainants were

subpoenaed, but neither of them appeared to testify at this hearing. Person A telephoned the Advocate a week before the hearing to tell her that he had moved to Los Angeles and could not afford the airfare to New York. Although aware of the hearing date and given ample notice by the Advocate, Person B gave no reason why he failed to appear in Court.

Deprived of the complainants' appearances, the Department proceeded with the transcripts of the complainants' interviews by Detective Acevedo. The statements by Person A and Person B are similar. Frustrated by the responding officers' inaction, they left and headed for a bar. They were still "in shock." They had a drink and went to Person B's apartment. Person B's roommate convinced them to go to the precinct and file a report. They felt, Person A said, "We're tired, we're overwhelmed, but this needs to be done . . . ."

While Person A and Person B were seated at the precinct "there was a woman who I don't know her name, she immediately gave us attitude like what do you want, why are you here?" Person A said he did not "know why she came off so – with so much attitude before we had even said anything to her. She said that there was nothing they could do, there was no report to be filed, before she knew any facts about anything. And she said why are you here, and we, you know, kind of tried to explain it to her, and she just was basically yelling at us from moment one." He said that they could not "get a word in edgewise with her."

Person B stated, "They would not allow us to file a report." He said, "The lady behind the desk, I believe she's some sort of disabled cop at this point, she had a cane, and she clearly had been filled in on the situation and tried to kick us out the second we walked in the door."

Person B indicated that Respondent said that what the police officers had originally told them was correct, that “there’s nothing they can do for you. . . this isn’t assault, this is just harassment. Person B said, “Well, either way you have to write a report up, you have to write a file on this.”

Monahan was helpful and referred them to Valentine. Before they spoke with Valentine, they saw Respondent speaking to her. Person A said, “I don’t know exactly what she was saying. She was whispering to her about our case, and all I could hear her say was it’s just a couple of guys shoving, blah, blah, blah, blah, blah.”

Person B said they “saw Cane Lady<sup>1</sup> walk into the clerk and started like whispering in her ear, yeah, they attacked a guy and this guy said they were all up on his shit, like trying to downplay our story to the clerk, which didn’t seem necessary. We’re telling our account. Let her write our account, and you can write your own account later. She was so adamant on kicking us out, she wanted to have nothing to do with us and did not want us to file a report for some reason. I don’t know why.”

During the two days following the incident, the complainants called the precinct to get Respondent’s name. Person B said that when he called “she kept hanging up” on him and others who were trying to get her name.

Respondent testified that when there is an officer assigned in the 124 Room, she gets a short synopsis of the complainants’ story to refer to that officer in the 124 Room. Then that officer in the 124 Room questions the complainants further and drafts the Complaint Report. Respondent’s main responsibility is to answer the switchboard. Only

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<sup>1</sup> Person B referred to Respondent a couple of times as “Cane Lady” in his interview.

when there is no one assigned to the 124 Room does the Desk Officer direct Respondent to draft Complaint Reports.

Respondent described the complainants as “pretty agitated” and “loud and boisterous” when they came into the precinct. When they came near her, she “could smell the alcohol on their breath” and “could see that they had glassy eyes.” They told her that both of them and one other man, who had gone home, had been assaulted by one person out in the street. They were also extremely upset because the police responded to the scene and did nothing.

Respondent was having a hard time understanding them. When she asked them the names of the police involved, they could not tell her. They said that they were injured. But when she asked what their injuries were, they could not tell her. Neither of them showed her any injuries. She stood up to look at their clothes for blood, but could see nothing. Their clothes were arranged neatly, so it did not seem that they were in a fight. Finally, one of them pointed towards his lips, but she could not see anything.

She informed them that the complaint was not going to be assault, but harassment. When she started to explain the difference between assault and harassment, they became more agitated, hostile and extremely upset. The conversation “kept going back and forth, they kept insisting it was assault, I was telling them that it was harassment.”

Finally, Monahan intervened and he pulled them to the side to speak to them. Respondent then went into the 124 Room to inform Valentine that there were people ready to make a report. Respondent told Valentine that she believed that the classification was a harassment and not assault. Respondent explained to Valentine that one person said that he had an injured lip but she did not see any injuries. Although she

was not responsible for drafting the final report, Respondent testified that she had a duty to tell the PAA as much as possible to assist the PAA. After relaying the information to Valentine, Respondent left the room and went back to the TS where she had to keep answering the phones.

When Respondent completed her tour of duty for that Friday night, she worked one more night. Then she was off for the next several days and did not return to work until Tuesday night. After the complainants left the precinct, she never received any phone calls from them. She did not answer the phone and hang up without identifying herself. She has never answered the phone without giving her name and just hanging up. She always answers the phone with the words required by protocol: "Midtown North Precinct, Officer Quintero. How may I help you?"

Respondent stated that she was not rude to the complainants and that she kept addressing them as "Sir." She reconfirmed that she did not fail to take a report from them and did not prevent the complainants from telling their story.

In its argument, the Department primarily relied on the complainants' out-of-court statements and maintained that Respondent's testimony was not credible.

The Department argued that Respondent's lack of candor was reflected by her ability to remember details like the complainants being loud and boisterous, but not remember whether she told them to leave the precinct. As Respondent's attorney emphasized, Respondent was not interviewed until almost a year after the incident. She could not be expected to remember every word of a conversation from a year ago.

The complainants' anger that the Complaint Report would be for harassment and not assault was a story that Respondent fabricated, the Department argued. Respondent was trying to cover up that the real reason for the complainants' anger was that Respondent refused to take their complaint. Respondent maintained that she is not required to take a report, yet she testified that she engaged in a lengthy conversation with the complainants about what the complaint should be. These two assertions, the Department argued, were contradictions.

Respondent's explanation that she generally takes a synopsis from the complainants before referring them to the 124 Room was plausible. Respondent testified credibly that the complainants were not satisfied with her classification of their complaint so that she was drawn into a "back and forth" conversation with them.

Both Valentine and Monahan observed Person A's injuries and did not observe that the complainants were intoxicated. The Department argued that these testimonies of Valentine and Monahan undermined Respondent's testimony that the complainants were drunk and that she saw no injury. However, both Valentine and Monahan confirmed that they could not easily see the injury. Valentine had to walk over and look closely while Person A pulled his lip down. Monahan agreed that the decision to draft the Complaint Report for assault instead of harassment was a close call. Once Monahan agreed that the Complaint Report should be for assault, the evidence indicated that the complainants' demeanor became calmer.

The Department referred to Acevedo's testimony to support the credibility of the absent complainants. Acevedo investigated the criminal charges against Person C, but did not investigate the administrative charges against the field officers or Respondent. When

deciding whether to classify a crime as a hate crime, Acevedo testified that he evaluates the credibility of witnesses. In making his evaluations, he looks at other corroborating evidence and whether the witness has made these kinds of allegations in the past. In some of his past investigations, Acevedo has determined that the complainants lack credibility. In this case, after speaking with Person B and Person A, he found them credible and determined that the incident with Person C that they described did occur.<sup>2</sup>

The Department argued that Acevedo's finding Person A and Person B credible in the assault charge against Person C corroborated the complainants' credibility in this charge against Respondent. However, Acevedo's opinion about the complainant's credibility is not corroboration of the complainants' statements. Nor is Acevedo's opinion a substitute for this Court's responsibility to determine credibility.

There are too many questions about the complainants' credibility left unanswered. The complainants alleged that Respondent kept hanging up on them when they called the precinct. But the evidence did not demonstrate that Respondent answered the phone when the complainants called, how her voice was recognized, or whether she was even working then. The complainants indicated that Respondent tried to influence and prevent Valentine from taking their complaint. But Valentine testified that Respondent did not interfere or prevent her from taking the complaint.

The complainants themselves admitted that they were tired, shocked and angry with the responding police and had been drinking at a bar. Because of their recent experience with the police and their condition, Person A and Person B may have misinterpreted what Respondent was saying to them. Without the complainants' live testimony, and the

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<sup>2</sup> Person C's case was handled by a military tribunal. The responding police officers who initially failed to take the report that night have pled guilty to disciplinary charges.

opportunity to observe them under cross-examination, this Court cannot evaluate what really happened in the stationhouse that night.

There was no evidence that a supervisor directed Respondent to write up a Complaint Report and that she failed to do so. There was no independent corroboration that Respondent was rude to the complainants and refused to take their complaint. The only evidence the Department submitted that Respondent failed to make a Complaint Report was from two civilians who failed to appear to testify. There is insufficient evidence to sustain this charge against Respondent. Therefore, Respondent is found Not Guilty.

Respectfully submitted,



Amy J. Porter  
Assistant Deputy Commissioner – Trials

**APPROVED**  
MAR 26 2013  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER